

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

RONALD BOYEDE OLAJIDE,

Plaintiff and Appellant,

v.

CALIFORNIA DEPARTMENT OF
MOTOR VEHICLES,

Defendant and Respondent.

A133375

(Alameda County
Super. Ct. No. RG11571397)

I.

INTRODUCTION

Ronald Boyede Olajide (appellant) appeals from the trial court's denial of his petition for writ of administrative mandamus. That petition followed the suspension of appellant's driving privileges by respondent after he refused to submit to a chemical test to determine if he was driving under the influence, and after being admonished by the arresting officer that his driving privileges would be suspended if he failed to submit to such testing. (Veh. Code, § 13353.2.)¹ The sole issue he raises on appeal is his contention, also made in the trial court, that respondent lacked jurisdiction to suspend his driving privileges. As best as we can discern from his opening brief,² appellant claims that the California Vehicle Code does not apply to anyone other than one driving for the

¹ All subsequent undesignated statutory references are to the Vehicle Code.

² No reply brief was filed by appellant.

State of California or for any political subdivision thereof, or one driving for commercial purposes. We respectfully disagree, and affirm.

II.

PROCEDURAL BACKGROUND

Because appellant does not challenge the factual findings made against him by respondent or by the trial court, we provide only a brief narrative of those events leading up to his licensure suspension. Appellant's vehicle was stopped at approximately 3:35 a.m. on June 6, 2009, for failing to maintain his vehicle in a single travel lane. Upon contact, the detaining police officer smelled alcohol on appellant's breath and noticed that his eyes were bloodshot. Appellant failed a field sobriety test, and was thereafter directed by the officer to undergo a preliminary alcohol screening (PAS) device test. Appellant failed to complete the test and was arrested for driving under the influence (DUI) and taken to Santa Rita jail.

After being advised of the implied consent law, appellant agreed to take a breath test, but again was unable to complete that test. When advised that the law required him to submit to a blood test under the circumstances, appellant refused.

Appellant commenced an administrative proceeding before respondent challenging the determination made by the arresting officer that he had been driving under the influence of alcohol or drugs, and his alleged refusal to submit to a blood screening test, pursuant to section 13353.2. A hearing before a hearing officer took place on July 8, 2009. At the conclusion of the hearing, the hearing officer took the matter under submission.

A "Notification of Findings and Decision" was signed on September 2, 2009. That decision concluded that appellant had failed to complete the required chemical testing for alcohol after being advised that his driving privileges would be suspended if he failed or refused to submit to such testing. Accordingly, the hearing officer concluded

that a suspension of appellant's driving privileges was appropriate, and the period of suspension was ordered to be reinstated.³

Thereafter, appellant filed a petition for writ of mandate in the Alameda County Superior Court on April 18, 2011, seeking review of respondent's decision to suspend appellant's driving privileges. That petition was later amended on August 11, 2011. Appellant's contentions below included that respondent had no jurisdiction to suspend his driving privileges because: (1) the California Vehicle Code did not apply to him as a "free man of California;" and (2) he was not a driver for hire, and he was not operating a vehicle for commercial purposes or under contract for the State of California at the time he was stopped.

On September 16, 2011, following a hearing, the trial court denied appellant's petition finding that appellant's contentions that respondent lacked jurisdiction to suspend his driving privileges were "without merit." Alternatively, the trial court concluded that appellant's claim was moot because the period of suspension had terminated.⁴

This appeal followed.

III. DISCUSSION

As noted, appellant's sole contention on appeal is that respondent lacked jurisdiction to suspend his driving privileges because he was not engaged in driving a vehicle for the State of California at the time he was stopped, or driving for commercial purposes, and the provisions of the Vehicle Code are limited to those circumstances. (§ 21052.)

³ Although respondent initially suspended appellant's driving privileges for a one-year period, this was later found to have been the result of a clerical error, and that a two-year suspension was required. Appellant subsequently received notice of the error and correction. Appellant does not challenge his suspension based on this error.

⁴ Because we determine the trial court was correct in rejecting appellant's jurisdictional claim, we need not, and do not, decide whether those claims became moot when the suspension period ended.

The standard of judicial review in a traditional mandamus proceeding involving purely legal issues, such as issues of statutory construction, is de novo. (*Schram Construction, Inc. v. Regents of University of California* (2010) 187 Cal.App.4th 1040, 1051-1052; *California School Employees Assn. v. Torrance Unified School Dist.* (2010) 182 Cal.App.4th 1040, 1044.) Therefore, we are not bound by the findings of the trial court or the administrative agency to the extent they constitute conclusions of law. (*Purdy v. Teachers' Retirement Board* (1980) 113 Cal.App.3d 942, 949; see also *Antelope Valley Press v. Poizner* (2008) 162 Cal.App.4th 839, 851 [“The nature of an issue on appeal determines the appellate court’s standard of review in an administrative mandamus case,” and thus “[q]uestions of law . . . are given a de novo review”].)

The section under which appellant’s driving privileges were suspended is section 13353, which provides in relevant part: “(a) If a person refuses the officer’s request to submit to, or fails to complete, a chemical test or tests pursuant to Section 23612, upon receipt of the officer’s sworn statement that the officer had reasonable cause to believe the person had been driving a motor vehicle in violation of Section 23140, 23152, or 23153, and that the person had refused to submit to, or did not complete, the test or tests after being requested by the officer, the department shall do one of the following:

“.....

“(2) Revoke the person’s privilege to operate a motor vehicle for a period of two years if the refusal occurred within 10 years of either (A) a separate violation of Section 23103 as specified in Section 23103.5, or of Section 23140, 23152, or 23153, or of Section 191.5 or subdivision (a) of Section 192.5 of the Penal Code, that resulted in a conviction, or (B) a suspension or revocation of the person’s privilege to operate a motor vehicle pursuant to this section or Section 13353.2 for an offense that occurred on a separate occasion.”⁵

⁵ Appellant admitted at the administrative hearing that he had a prior DUI.

In support of his contention that the Vehicle Code does not apply to him, appellant refers to section 21052, which provides: “The provisions of this code applicable to the drivers of vehicles upon the highways apply to the drivers of all vehicles while engaged in the course of employment by this State, any political subdivision thereof, any municipal corporation, or any district, including authorized emergency vehicles subject to those exemptions granted such authorized emergency vehicles in this code.”

Appellant misinterprets this section to mean that the entire Vehicle Code, including section 11353.2, *only* applies to those described in section 21052. Section 21052 was originally enacted as section 453 in 1935 specifically to include police, fire and rescue personnel within its coverage while operating vehicles in the ordinary course of their work as such. (See 17 Ops.Cal.Atty.Gen. 121 (1951); 8 Cal.Jur.3d (2005) Automobiles, § 225, pp. 326-327.) It was not intended to exclude all other persons from the coverage of the Vehicle Code.

There is no doubt that the provisions of that code, including section 11353.2, apply to appellant. (*Hernandez v. Department of Motor Vehicles* (1981) 30 Cal.3d 70, 73.) Therefore, we reject his narrow reading of section 11353.2, and conclude the hearing officer correctly suspended appellant’s driving privileges. Accordingly, the trial court similarly correctly denied appellant’s writ for administrative mandamus.

III.

DISPOSITION

The judgment is affirmed.

RUVOLO, P. J.

We concur:

REARDON, J.

RIVERA, J.